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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2862 OF 1998

Janrao Mahtarba Bhikaji ... Petitioner

V/s

1. Samata Shikshan Prasarak Sanstha
2. The Chairman,
   Samata Shikshan Prasarak Sanstha
3. The Secretary,
   (School Committee) Adarsha Madhyamik
   Vidyalaya.
4. The Head Master,
   Adarsha Madhyamik Vidyalaya.
5. The Education Officer (Secondary),
   Zilla Parishad, Nasik.
6. The State of Maharashtra. ... Respondents

Mr. Mihir Desai for the petitioner.

Mr. M.S.Karnik for Respondent Nos. 1 to 4.

CORAM: SMT. NISHITA MHATRE, J.

DATED: 18TH OCTOBER, 2007.

ORAL JUDGMENT:

1. This petition challenges the order of the School Tribunal dated 14.5.1997 whereby the School Tribunal has partly allowed the appeal filed by the petitioner.

2. The petitioner was appointed on 22.6.1992 as an Assistant Teacher with the 1st respondent management which runs a secondary school. Respondent No.4 is the Head Master of that school. The petitioner belongs to

N.T. category and is a physically challenged person. On 30.11.1995, the petitioner's services were terminated. He therefore preferred an appeal to the School Tribunal on 20.12.1995 challenging his termination from service. An interim order was passed by the School Tribunal on 18.12.1995 staying the order of termination issued against the petitioner. It appears that the respondent school management refused to comply with the interim order of the School Tribunal.

3. On 14.10.1996, the Tribunal decided the appeal. It held that the services of the petitioner had wrongly been terminated. The Tribunal concluded that the petitioner was employed as a trained teacher since he was appointed against a clear vacancy. The Tribunal disbelieved the evidence of the school management that the petitioner had abandoned his service. According to the School Tribunal, the petitioner had sufficiently established that his services were wrongly terminated and that, therefore, he was entitled to the relief of reinstatement in service. However, the Tribunal rejected the petitioner's claim for back wages. It is in these circumstances that the present petition has been filed.

4. An affidavit has been filed by the Deputy Education

Officer in reply to the petition. It is averred therein that the respondent No.5 has granted approval to the appointment of the petitioner with effect from 21.7.1997 i.e. the date of his reinstatement in service pursuant to the order of the School Tribunal.

5. Mr.Desai, learned advocate for the petitioner submits that the Tribunal has given no reasons as to why back wages and continuity of service have been denied to the petitioner. He submits that continuity of service and back wages follow as a matter of course after an employee is reinstated, unless there are sufficient reasons to depart from the normal rule.

6. In my opinion, the Tribunal has erred in not granting continuity of service and back wages to the petitioner. The Tribunal has concluded that there was no abandonment of service and that the petitioner had in fact been terminated from the services of the respondent Nos.1 to 4.

7. In these circumstances, when the Tribunal had directed that the petitioner be reinstated in service, it should have granted the relief of back wages. It is possible that the Tribunal has lost sight of the fact that due to an interim order passed by it on 18.10.1995

the petitioner was entitled to continue in service as the order of termination had been stayed. However, this order was not followed by the management. Therefore, the petitioner would be entitled to back wages at least from the date on which the interim order was passed. Once reinstatement is granted, the petitioner would be entitled to continuity of service as a consequential relief.

8. In these circumstances, the order of the Tribunal refusing back wages is set aside.

9. The Tribunal has not specifically refused continuity of service and, therefore, it is made clear that the order of reinstatement would include continuity of service. The petitioner is also entitled to back wages for the period from 18.12.1995 till his reinstatement in service on 21.7.1997.

10. Petition allowed. Rule made absolute. No costs.

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